

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B5

FILE:

Office: NEBRASKA SERVICE CENTER

Date: DEC 02 2010

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

IN BEHALF OF PETITIONER:

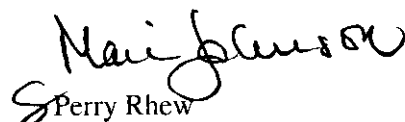
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be dismissed.

The regulation at 8 C.F.R. § 103.5(a)(i) provides, in pertinent part:

Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). Service records reveal that the AAO's notice was mailed to the petitioner at his address of record and to counsel at his address of record. The petitioner has not demonstrated that he or counsel advised the AAO of any change of address. The regulation at 8 C.F.R. § 103.5(a)(1)(iii)(E), relating to the filing requirements for motions, provides that a motion must be "[s]ubmitted to the office *maintaining the record* upon which the unfavorable decisions was made for forwarding to the official having jurisdiction." (Emphasis added.)

The AAO dismissed the petitioner's appeal on March 11, 2009. The petitioner dated the motion August 10, 2009. U.S. Citizenship and Immigration Services (USCIS) received the motion on August 12, 2009, approximately five months later.

In light of the above, the motion is untimely. The petitioner asserts that on March 24, 2009 and on June 20, 2009, he requested an extension of time to file a motion from the director and the AAO because of unarticulated reasons beyond his control. The petitioner further indicates that the director advised of the requirement for filing a motion to receive further consideration. The petitioner did not submit the director's response and it is not in the record of proceeding. The motion is under the jurisdiction of the AAO, not the director. While the petitioner indicated he was filing a joint motion to reopen and reconsider, the petitioner has not demonstrated that the failure to file a timely motion was reasonable and beyond the petitioner's control.

As the motion was untimely filed, the motion must be dismissed.

ORDER: The motion is dismissed.